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DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FIREBAUGH CANAL COMPANY and
CENTRAL CALIFORNIA IRRIGATION
DISTRICT,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et
al.,

Defendants,

And

WESTLANDS WATER DISTRICT

Defendant-in-
Intervention.

SUMNER PECK RANCH, INC., a
California corporation, et al.,

Plaintiffs,

v.

BUREAU OF RECLAMATION, et al.,

Defendants.

CIV-F-88-634 OWW
CIV-F-91-048 OWW

ORDER MODIFYING PARTIAL
JUDGMENT ON FINDINGS OF
FACT AND CONCLUSIONS OF LAW
RE: STATUTORY DUTY TO
CONFORM TO NINTH CIRCUIT
OPINION

1 The parties' cross-motions for modification of the
2 Partial Judgment on Findings of Fact and Conclusions of Law Re:
3 Statutory Duty ("Partial Judgment") to conform to the United
4 States Court of Appeals for the Ninth Circuit opinion in
5 *Firebaugh Canal Co. v. United States*, 203 F.3d 568, 578 (9th Cir.
6 2000) came on for hearing September 12, 2000, at 9:00 a.m.
7 Plaintiffs Firebaugh Canal Water District, et al., were
8 represented by Minasian, Spruance, Baber, Maith, Soares & Sexton,
9 through Michael V. Sexton, Esq. Plaintiffs Sumner Peck Ranch,
10 Inc., et al., were represented by Smiland & Khachigian, through
11 William M. Smiland, Esq. Defendant-in-Intervention and Defendant
12 Westlands Water District was represented by Kronick, Moskovitz,
13 Tiedemann & Girard, through Thomas W. Birmingham, Esq.
14 Defendants United States Department of the Interior, et al., were
15 represented by the U.S. Department of Justice Environment &
16 Natural Resources Division, through Maria A. Iizuka, Esq., and
17 Yoshinori H.T. Himel, Esq., Assistant U.S. Attorney. Intervenor
18 County of Contra Costa, et al., were represented by Laurens H.
19 Silver, Esq. After consideration of the briefs and arguments of
20 counsel, and all other matters presented:

21 ON REMAND, THE PARTIAL JUDGMENT ON FINDINGS OF FACT AND
22 CONCLUSIONS OF LAW FILED March 12, 1995, IS MODIFIED AS FOLLOWS:

23 1. The Secretary of the Interior's failure to provide
24 drainage to the San Luis Unit of the Central Valley Project, as
25 is mandated by section 1(a) of the San Luis Act, 74 Stat. 156,
26 constitutes agency action unlawfully withheld.

1 2. Unless ordered by this court, the Secretary of the
2 Interior and the United States Department of the Interior, Bureau
3 of Reclamation, on the Secretary's behalf, will not provide
4 drainage to the San Luis Unit of the Central Valley Project, as
5 is mandated by section 1(a) of the San Luis Act.

6 3. Congressional actions subsequent to enactment of the
7 San Luis Act have supplemented the means available to the
8 Department of the Interior's discretion to meet its drainage
9 obligation.

10 4. Now the time has come for the Department of the
11 Interior and the Bureau of Reclamation to bring the past two
12 decades of studies, and the \$50 million expended pursuing an "in
13 valley" drainage solution, to bear in meeting its duty to provide
14 drainage under the San Luis Act.

15 GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED:

16 1. The portion of the Partial Judgment that provides
17 "FURTHER ORDERED that the Secretary of the Interior, the United
18 States Department of the Interior, the United States Bureau of
19 Reclamation, and each of them, and their officials and employees,
20 shall, without delay, take such reasonable and necessary actions
21 to promptly prepare, file, and pursue an application for a
22 discharge permit for the San Luis Drain to comply with section
23 1(a) of the San Luis Act to provide drainage to the San Luis
24 Unit" is vacated.

25 2. The Partial Judgment is amended to provide:

26 FURTHER ORDERED that the Secretary of the Interior, the

1 United States Department of the Interior, the United States
2 Bureau of Reclamation, and each of them, and their officials, and
3 employees, shall, without delay, provide drainage to the San Luis
4 Unit pursuant to the statutory duty imposed by section 1(a) of
5 the San Luis Act. The Secretary of the Interior, the United
6 States Department of the Interior, the United States Bureau of
7 Reclamation, and each of them, shall no later than January 29,
8 2001, submit to this court a detailed plan describing the action
9 or actions, whether short term or long term, they will take to
10 promptly provide drainage to the San Luis Unit, which plan shall
11 contain a schedule of dates by which the action or actions
12 described in the plan will be accomplished. Nothing contained
13 herein is intended to divest the Secretary of the Interior, the
14 United States Department of the Interior, or the United States
15 Bureau of Reclamation of any discretion they have to select means
16 other than an interceptor drain to provide drainage to the San
17 Luis Unit. Nor is anything contained herein intended to excuse
18 the Secretary of the Interior, the United States Department of
19 the Interior or the United States Bureau of Reclamation from
20 complying with any applicable law.

21 3. Federal Defendants' Motion to Vacate any Portion of
22 Injunction Remaining After Ninth Circuit Decision in Firebaugh is
23 DENIED.

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1 4. The Court reserves jurisdiction to enforce the
2 provisions of the Partial Judgment, as amended herein.
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4 DATED: November 29, 2000.

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7 Oliver W. Wanger
8 UNITED STATES DISTRICT JUDGE

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firebaugh order one